IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3180 OF 2003

Ms.Gauri Godse for the Petitioner.

Ms.Nayana Thatte h/f S.M. Oak for Respondent.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 8TH JUNE,2005

P.C.:

1. Rule. Returnable forthwith. Heard finally by consent of parties.

2. By the order impugned the trial court has rejected the application made by the Plaintiff for amendment in the plaint. The Plaintiff has filed the suit for money decree. After the Defendant filed the written statement, the Plaintiff made an application for amendment in the plaint. The Plaintiff was not seeking any amendment in the prayer

clause of the plaint. The Plaintiff was disclosing certain additional facts on which the Plaintiff wanted to rely and which according to the Plaintiff became relevant because of the defence put up by the Defendant in the Written Statement.

3. By the impugned order, amendment application has been rejected on the ground that by the amendment nature of the suit will be changed. The ground given by the learned trial court is obviously without any substance. Because, admittedly the Plaintiff is not amending the prayer clause of the suit. Suit continues to be a suit for money decree. What is being done by the amendment is certain additional facts are being brought on record. Considering the existing law on the power of the court to grant amendment in the pleadings, in my opinion, the trial court ought not have rejected the application for amendment in the plaint. If the Plaintiff is disclosing certain additional facts, then the Defendant would be given an opportunity to amend his written

statement. In my opinion, therefore, the following order would meet the ends of justice.

O R D E R

The order impugned in the petition is set aside. The application filed by the Plaintiff for amendment in the plaint at Exh.42 on the record of Spl.Civil Suit No.647 of 1997 is granted. Defendant is granted liberty to carry out consequential amendments in the written statement.

Rule made absolute accordingly with no order as to costs.

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